IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 266 of 2002
For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMINABEN W/O. ABUBHAI CHAANIYA
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 266 of 2002
MR MM TIRMIZI for Petitioner No. 1
MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 2nd Nov. 2001 passed by the Commissioner of Police, Rajkot City, Rajkot in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four registered

offences against the detenu under the Bombay Prohibition Act and recorded statements of two anonymous witnesses. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing her illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner submitted that a representation was made on behalf of the detenu on 21.12.2001, the same was despatched on 24th Dec. 2001, which was received by the Government on 26.12.2001 and as stated in the communication dated 4.1.2002, it was rejected on 30.12.2001. The decision was communicated by communication dated 4.1.2002. Learned Advocate for the petitioner Mr. Tirmizi places on record the original communication received by the detenu and submits that there is delay in communication which has affected the right of the detenu. He relied upon the decision in the case of Harish Pahwa Vs. State of U.P., reported in AIR 1981 SC 1126.

4. Learned Assistant Government Pleader Mr. S.S. Patel has opposed to this petition. Mr. Patel also tried to explain the gap between 30.12.2001 and 4.1.2002 by stating that though the decision was taken on 30.12.2001, the communication was signed on 1.1.2002.

5. Having regard to the rival side contentions, the continued detention of the detenu would be affected only on account of delay in communicating the decision on the representation in light of the decision of the apex Court in the case of Harish Pahwa Vs State of U.P. (supra). In that case the order was quashed when there was delay of only 2 days. In the instant case, gap between 30.12.2001 and 4.1.2002 was tried to be explained by learned AGP by stating that though the decision was taken on 30.12.2001, the communication was signed on 1.1.2002 and then also he could not explained the remainder of the period falling between 1.1.2002 to 4.1.2002, during which the communication rejecting the representation remained unattended. Thus, there is a delay of 3 days and such delay in communication has resulted into infringement of the right of the detenu of making an effective representation. The order of detention therefore deserves to be quashed.

6. The petition is therefore, allowed. Order of detention dated 2.11.2001 passed by the Commissioner of Police, Rajkot City is quashed and set aside. Detenu Aminaben w/o Abubhai Chaaniya be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas